

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
ROSIE MARTINEZ, :
:
Plaintiff, : 16-CV-00079 (AMD)
:
v. :
:
CITY OF NEW YORK, et al., : 225 Cadman Plaza East
:
Defendants. : Brooklyn, New York
:
January 3, 2018
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TRANSCRIPT OF CIVIL CAUSE FOR SHOW CAUSE HEARING
BEFORE THE HONORABLE CHERYL L. POLLAK
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 (Proceedings began at 2:32 p.m.)

2 THE CLERK: All rise. This is Case No. 16-CV-79,
3 Martinez v. City of New York, Civil Cause for Show Cause
4 Hearing.

5 Counsel, please state your appearances for the
6 record.

7 MS. FETT: Good afternoon, Your Honor. Baree Fett
8 for plaintiff Rosie Martinez.

9 THE COURT: Good afternoon.

10 MR. HARVIS: Gabriel Harvis also for the plaintiff.
11 Good afternoon, Your Honor.

12 THE COURT: Good afternoon.

13 MR. THADANI: Good afternoon, Your Honor. Kevin
14 Thadani, Office of the Corporation Counsel on behalf of
15 defendant City of New York for Jason Weitzman.

16 MS. O'FLYNN: Good afternoon, Your Honor. Mary
17 O'Flynn also from Corporation Counsel on behalf of defendants.

18 THE COURT: All right.

19 MR. JOHNSON: Paul Johnson also on behalf of
20 defendants.

21 THE COURT: All right. Good afternoon, everyone.
22 You may be seated. So we're here because again there's been
23 an application before this court for sanctions, and I feel
24 like we were just here maybe less than a month ago. I have
25 reviewed all the papers. I guess I will defer to plaintiff's

1 counsel if you would like to go first and explain on the
2 record what the situation is from your perspective and then
3 I'll hear from defendants' counsel.

4 MS. FETT: Thank you, Your Honor. This is Baree
5 Fett for plaintiff. You know, looking back over the record of
6 this litigation, we see that at the time plaintiff filed her
7 complaint in January of 2016 there were already three separate
8 NYPD investigations and one CCRB investigation that was
9 underway.

10 These investigations were being conducted by
11 municipal agents and what appears to be a large portion of the
12 leadership team at the 107th Precinct. That includes Captain
13 Valergo, Captain Hanrahan, Lieutenants Cammy and Robinton and
14 Sergeant DiGenero, the intelligence officer.

15 All these officers were involved in one way or
16 another with the disputed events here. We found out last
17 month that multiple GO15s were conducted. There were multiple
18 substantiated findings. There were over 1,000 pages of
19 investigative documents generated, and they were all about the
20 disputed events here. And during the course of this
21 litigation over the last two years, we have heard from defense
22 counsel repeatedly in our attempts to find out the identity of
23 the officers and to locate documents and to find out what
24 happened to Ms. Martinez, we were told -- and it -- and it was
25 represented to the Court that defendants were investigating

1 the matter, that they had spent hundreds of hours
2 investigating the matter. In fact, in defendants' October
3 8th, 2017, letter they represented: "Supervisors in this
4 department have also spent dozens of hours assisting the
5 undersigned in locating documents, have kept close tabs on the
6 case to make sure that every discovery demand in this matter
7 is answered promptly. Paralegals from this office, record
8 keepers at the New York City Department of Corrections, police
9 officers from the 107th Precinct, and the New York City Police
10 Department's Civil Litigation Unit all were spending hundreds
11 of hours to make sure that they were being responsive to the
12 demands in this case."

13 And what we would want to know and what we would
14 want to ask the Court is what was really going on when they
15 were representing that they were looking for answers in this
16 case, that they were looking for documents, that they were
17 attempting to identify officers? What was really being done
18 during those hundreds of hours?

19 And what we think is defendants' latest response in
20 their answer to our latest sanction motion, it's very telling
21 because they -- I don't believe the defendants and the City of
22 New York thinks they've done anything wrong. I think they
23 believe that it's the plaintiff's fault. And we believe that
24 is why a stronger sanction is necessary here because if the
25 City can't learn from this case how to conduct discovery and

1 how to satisfy its obligations, then I can't imagine that they
2 would learn that in any case. We believe that a pass in this
3 case will give the impression that it's okay and it's
4 tolerated by the courts. The next time someone sues the City,
5 it needs to know that an investigation, besides running the
6 name of an officer through the system, is not enough.

7 As Judge Weinstein discussed in De Casa [Ph.], most
8 civil rights plaintiffs like Ms. Martinez, they don't have the
9 identity of their assailants. They don't know who the people
10 are that violated their rights. The accessed information is
11 uneven in this case. It is defendants that have the
12 information. The plaintiffs do not. But in our case,
13 plaintiffs were repeatedly attempting, through drips and drabs
14 of information, to try to get that information. The
15 defendants have an affirmative obligation not just to its
16 clients but to the citizen of this city to do an
17 investigation. The defendants here were met with a litany of
18 orders from this court -- from this Court forgive me, along
19 with multiple document requests, interrogatories, and demands
20 from plaintiff.

21 An example of the defendants' failure in this case
22 is in their discovery responses. In May of 2016 -- and I
23 believe -- well, all the investigations were ongoing at that
24 point, and I think some of them were concluded at that point.
25 Defendants responded to Document Request No. 4: "Produce the

1 complete files, including transcripts, audio recordings,
2 exhibits, and enclosures of each investigation conducted by
3 any governmental body, i.e., CCRB, IAB, et cetera." And their
4 response was [inaudible] objections. Upon information and
5 belief, defendant states that no such documents exist but
6 they're continuing to search. That was May 2016. Then we
7 have another round of responses in January 2017, and their
8 response to that same exact document request was the same
9 exact response. "No such documents exist. We're continuing
10 to search."

11 It's unclear, Your Honor, how this can be fixed at
12 this point. We're not in a position to start the case over.
13 We're about 19 days away from the statute of limitations. And
14 we believe the prejudice to plaintiff, a woman who alleges,
15 credibly alleges, she was abused by male officers inside the
16 107th Precinct has been severely prejudiced. We have taken 11
17 depositions without key information and documents, and the
18 investigations that were disclosed in December, that's not
19 even the full complement of documents.

20 It's also the documents that we've been litigating
21 before Your Honor for two years now. It's buy reports
22 produced after a deposition. It's half of a disciplinary file
23 produced after a deposition. It's half of a scheduling and
24 assignment information about Defendant Weitzman produced after
25 his deposition. It's not having access to Captain Hanrahan

1 who conducted one of the depositions who has since passed
2 away. It's needless delay. It's an enormous amount of fees
3 and costs. It's the fact that memories have faded.
4 Defendants have admitted that some of the witnesses that
5 they've since disclosed don't have a memory of the incident.
6 Even plaintiff's expert was not able to examine her in the
7 context of the injury that defendant was describing, and now
8 he can be opened up to cross-examination as can plaintiff.

9 The defendants on the other hand will have an
10 opportunity to present an expert. They have the full story in
11 front of them, and it's just simply unfair to plaintiff. And
12 we're not sure at this point how that can be solved. Thank
13 you, Your Honor.

14 MR. THADANI: Kavin Thadani on behalf of defendants.
15 First of all, Your Honor, the City and defendants take their
16 discovery obligation extremely seriously. It's our contention
17 that we have complied with the orders of the Court and with
18 our duties in terms of discovery as best as we can.

19 THE COURT: Really? Are you kidding me? You're
20 going to start with that? Why have I had to issue so many
21 orders in this case?

22 MS. O'FLYNN: Your Honor, if I may, it appears that
23 there's been a moving target in this case since the beginning.

24 THE COURT: Yeah. It -- the moving target, Ms.
25 O'Flynn, is the fact that despite efforts on the part of this

1 Court to obtain what is clearly, clearly relevant information,
2 relevant documentation, there has been delay and delay and
3 obfuscation. And here we are, as Ms. Fett noted, on the eve
4 of the statute of limitations finding out now that there's an
5 investigation that was never -- and I'm holding up a folder of
6 almost two inches' worth of pages that were never disclosed
7 before. So please do not insult the intelligence of this
8 Court by going immediately to defendants have complied with
9 all of their discovery obligations. Ms. O'Flynn, you were not
10 here last time when I held an order to show cause why the City
11 should not be held in contempt and that was even before --
12 before -- the December revelations of an investigation --
13 actually, three investigations that had never been disclosed
14 before.

15 So I would ask you to take a breath and go back and
16 start over again and explain to me why -- why -- in all the
17 20-some years that I have been sitting in this court I have
18 never seen -- never seen -- such a dereliction of duty on the
19 part of corporation counsel. So take a minute and regroup
20 before you go down that road.

21 MR. THADANI: Your Honor, if I may just with --
22 again, the disclosures on December 18th, 2017, were
23 respectfully with respect to the IAB investigations. As we've
24 described in our letter, we did not learn about that
25 information until Officer -- the arresting officer in the

1 case, Eric Ryan [Ph.] was -- plaintiff's counsel indicated
2 that they wanted to depose that officer. In preparing for
3 that deposition I had a conversation with him. He'd indicated
4 to me that he spoke with IAB in terms of an underlying
5 investigation. That was the first --

6 THE COURT: Well, I understand --

7 MR. THADANI: -- that we have heard --

8 THE COURT: I understand that you're new to this
9 case, that you have been recently assigned, perhaps in
10 response to this Court's suggestion. But I have no way to
11 understand why the arresting officer was not at least
12 interviewed -- interviewed -- by your officer before this
13 last-minute deposition request. I mean why was this IAB
14 investigation never uncovered? Or frankly, what the other
15 inference is is that there has been a blatant coverup here,
16 whether on behalf of the Corporation Counsel's Office or the
17 New York City Police Department. One way or the other that's
18 the other inference. The innocent inference is incompetence,
19 but the other inference is that there has been a blatant
20 attempt to prejudice the plaintiff here by failing to disclose
21 this.

22 Now I understand your claim is that you have no way
23 to search your files by the plaintiff's last name because she
24 didn't make the complaint. But really? Then isn't that on
25 you to come up with a better system?

1 MS. O'FLYNN: Well, Your Honor, if I may, with
2 respect to why the arresting officer was not brought in and
3 questioned in more detail, I think the nature of this case is
4 such that from the beginning we were informed it was not the
5 arresting officer involved. I think that's pretty clear that
6 plaintiff never alleged that the arresting officer was
7 involved. It was these unknown officers. In a perfect world,
8 that would have been a good course of action to interview that
9 officer early on, but from the beginning of this case we've
10 been trying to uncover information just as much as plaintiffs
11 have been about who these unidentified officers might be. The
12 reason why the records could not be searched is that that
13 investigation was tied to the arresting officer.

14 I do not dispute that that system is not ideal.
15 There have been improvements made since, you know, the
16 incident date. I think PD is always trying to improve the way
17 we can search for files. Unfortunately, this investigation
18 was tied to the arresting officer who had been put to the side
19 because we were dedicating time and resources trying to locate
20 photos of anybody at the precinct, trying to match a
21 description which as the Court might remember was rather
22 general, a white male between 30 and 50, salt-and-pepper hair,
23 a male, white, in his 30s from the 107. I understand a lot of
24 time in the beginning of this case was dedicated to trying to
25 provide photos. There were disputes over the photos. There

1 were disputes about whether they should be labeled or
2 unlabeled. But I assure the Court our office does take these
3 obligations very seriously. And to the extent that anybody
4 was in a position to know about a potential IAB, as we noted
5 in our letter plaintiff spoke to IAB. Plaintiff did not
6 inform any of us in any of the discovery responses, in any of
7 her sworn testimony that she had had a conversation with an
8 investigator. To the extent plaintiff thinks we're trying to
9 blame out that's not what we're trying to do. We're trying to
10 set the record in terms of what the chronology in this case
11 was.

12 THE COURT: You had multiple officers in the 107th
13 Precinct aware of this IAB investigation, a captain and a
14 lieutenant. So don't tell me it's the plaintiff's fault that
15 she didn't tell you she was -- she was spoken to by IAB. And
16 my understanding is that what they investigated or spoke to
17 her about wasn't even this issue. It was something separate
18 that happened to her allegedly during the course of this
19 arrest.

20 Am I wrong about that?

21 MS. FETT: No, that's correct, Your Honor. To
22 respond, first of all, Eric Ryan was -- that's the arresting
23 officer, was initially identified I believe in defendants'
24 initial disclosures in response to Your Honor's Valentin
25 order. We would have assumed that in offering his name they

1 would have done an interview of him, and they would have
2 gotten the information that I believe the most recent
3 assistant corporation counsel got in his first interview from
4 Mr. Ryan. That should have been done two years ago when the
5 name was first provided. That's the first -- and when
6 Hanrahan was still alive. That's the -- that's the first
7 point.

8 The second point is plaintiff specifically -- and I
9 think Your Honor might have heard in the audiotapes -- she
10 believed that she was simply making a statement about her
11 missing property, and she specifically declined to discuss her
12 -- the abuse because of this litigation. Now to call the
13 subjects of plaintiff's abuse moving targets, she specifically
14 in her 50-h in December of 2015 in her deposition in response
15 to interrogatory requests she did the best she could to
16 identify the -- these officers. But it is corporation counsel
17 who has access to their officers, to their precinct, to their
18 databases. It's on them. They have the affirmative duty as
19 the attorneys for the City to do a thorough and competent
20 investigation.

21 MR. THADANI: Your Honor, again, as my colleague had
22 already -- has already referenced, the focus wasn't on the
23 arresting officer. There was no claim that the officers that
24 allegedly assaulted the plaintiff at the precinct was the
25 arresting officer, was any officer involved in the

1 investigation leading up to the plaintiff's arrest.

2 THE COURT: But counsel --

3 MR. THADANI: Was an officer that --

4 THE COURT: -- any reasonable attorney with any
5 degree of intelligence would know that if there's a question
6 as to who the officers were who were in the precinct at the
7 time the arresting officer arrived and brought the plaintiff
8 in, one obvious person to interview would be the arresting
9 officer. The fact that he wasn't even spoken to until two
10 years into the investigation is astonishing.

11 MS. O'FLYNN: Your Honor, he was spoken to. He was
12 spoken to with respect to confirming that he was the arresting
13 officer and that information. But with respect to a more
14 detailed interview that would engage what kind of
15 investigations -- the topic came up not with respect to an
16 investigation into this because we didn't think there was one.
17 The topic came up because he was being deposed and then this
18 came to light.

19 MR. THADANI: And again, Your Honor --

20 THE COURT: It's just getting -- it's getting worse
21 and worse every time you say something. I -- how could you
22 conduct an investigation or even an interview in which you
23 don't talk to the officer about has anybody else spoken to you
24 about this, have you been interviewed, was that was an IAB
25 investigation? I mean I just don't understand --

1 MR. THADANI: I just -- one statement. Sergeant
2 Forgione -- or Sergeant DiGenero DiGeneroPh.] was the lead
3 investigator in this case. He gave the college grind because
4 he was in the 107th Precinct. Sergeant DiGenero's the one who
5 led the entire investigation who was the one who had all the
6 information about leading to the arrest, leading to the search
7 warrant. It was represented to us that Mr. Ryan's role in
8 this was minimal. And again, Your Honor, our focus early on
9 in the case was identifying individuals that matched the
10 description provided by plaintiff which was not the arresting
11 officer.

12 THE COURT: Oh, look, I know what the focus was. I
13 had to issue I don't know how many orders in an effort to try
14 to get you to identify the officers. So I don't need to be
15 reminded of that. But I still -- I go back to the fact that I
16 don't understand why there weren't multiple people interviewed
17 in the 107th Precinct in an effort to identify these officers
18 and you would have not discovered that there was an -- three
19 separate investigations being conducted? I just -- I don't
20 understand how that happens.

21 MR. THADANI: And again, Your Honor, with respect to
22 the two separate investigations, one involves missing
23 property. It's not the subject of plaintiff's claims in this
24 action. Plaintiff's claims in this action involve an alleged
25 use of excessive force at the 107 Precinct. It has nothing to

1 do with the execution of the search warrant, any alleged
2 missing property during the search warrant. The evidence
3 discrepancy also has nothing to do with plaintiff's claims,
4 does not even --

5 THE COURT: And yet you're using it --

6 MR. THADANI: -- involve the defendants in this
7 case.

8 THE COURT: -- to blame the plaintiff for not
9 disclosing the existence of the IAB investigation.

10 MR. THADANI: Your Honor, we were not trying to
11 blame the plaintiff.

12 THE COURT: You can't have it both ways.

13 MR. THADANI: We were just -- again we were
14 apprising the Court as to the chronology of events and what
15 occurred in this litigation. The fact remains that plaintiff
16 in their discovery responses, despite the fact that she had
17 been interviewed by IAB and despite the fact that she received
18 a letter about her complaint and received a letter explaining
19 that the complaint was unsubstantiated did not disclose --
20 specifically disclosed in her discovery responses that there
21 was no complaints made to any governmental body with respect
22 to anything to do with this incident.

23 THE COURT: What complaint did she make to a
24 governmental body? Where is it?

25 MR. THADANI: She made a complaint to IAB with

1 respect to alleged missing property during the execution of
2 the search warrant.

3 THE COURT: Well, what does that have to do -- you
4 just said that has nothing to do whatsoever to the issue in
5 this case. So why is it relevant?

6 MR. THADANI: Your Honor, it's relevant to the
7 extent that plaintiff's counsel raised it in their letter as
8 documents that they believe were untimely disclosed. The crux
9 of the matter is the investigation concerning a prisoner
10 injured in custody. And again, as we already explained, we
11 weren't able to retrieve that information by searching the
12 plaintiff's name. Officer Ryan wasn't spoken to in the detail
13 of -- in much detail prior to just recently because he wasn't
14 noticed for a deposition despite the fact that he was listed
15 as an -- in our initial disclosures early on in the case
16 because again the focus was on these two other defendants, one
17 of whom there is ample evidence in the record to suggest
18 wasn't even at the 107 Precinct at the time plaintiff alleges
19 this occurred and the other officer was a desk officer who had
20 no involvement in the investigation that led to the search
21 warrant execution and no involvement in the arrest.

22 THE COURT: But again --

23 MR. THADANI: And --

24 THE COURT: -- you're blaming the plaintiff for her
25 inability to identify officers when clearly the NYPD is in a
26 much better position to know who was involved in the precinct

1 at the time. And again I --

2 MR. THADANI: Your Honor, we're not -- we're not
3 blaming plaintiff. Again, the -- there was a photo --
4 photographs were produced early on in this litigation in which
5 plaintiff identified to individuals as the defendants in the
6 case. As plaintiff's counsel states in their letter, she has
7 a vivid recollection of the events, and she's certain that
8 these are the two defendants that assaulted her at the
9 precinct. Discovery, for the most part, has revolved around
10 identifying those officers, deposing those officers, and
11 placing those officers at the 107th Precinct or not. With
12 respect to this particular IAB investigative file that was
13 produced, this internal investigation concerning the fact that
14 it corroborates, one, information that plaintiff knew about
15 early on in this case, it was part of defendant's initial
16 disclosures to produce plaintiff's medical records. The
17 plaintiff's medical records disclosed that an officer at the
18 hospital told the medical staff that the plaintiff was
19 observed kicking and punching a wall at the precinct and that
20 was the source of her injury.

21 THE COURT: And then --

22 MR. THADANI: So that was nothing new. That's been
23 known.

24 THE COURT: -- if my recollection serves me
25 plaintiffs have spent a lot of time trying to figure out who
26 that person was unsuccessfully. And at the same time, the

1 City's position was that the plaintiff was not injured in the
2 precinct. So again, you know, you're turning it around on the
3 plaintiff which you're saying well, the plaintiff knew. She
4 should have figured this out long ago.

5 MR. THADANI: We're not -- we're not trying to turn
6 it on the plaintiff. First of all --

7 THE COURT: Do you see it this way, Ms. Fett, or is
8 just me? I -- maybe I'm misreading the defendants' response.

9 MS. FETT: Your Honor, I couldn't -- I couldn't
10 agree with you more. And in fact, I think defendants'
11 response in their last letter was offensive. I think it was
12 insulting to the plaintiff. I think it more than turned it
13 around on her. I think defendants believe she's a liar. I
14 think they believe that she was not injured and the two
15 officers that she identified were not in the precinct at the
16 same time so this never happened.

17 What they're ignoring is that they have an officer
18 calling IAB, a lieutenant, Lieutenant Cammy, admitting that he
19 put his hands on plaintiff that night. We found that out two
20 weeks ago. You have DiGenero who they want to say knew
21 everything about this investigation. We were never told that
22 DiGenero was the subject of four investigations, three IAB and
23 one CCRB, and he was actually substantiated. We just found
24 that out a few weeks ago. It just -- this -- I just think
25 that defendants are missing the points. I think that -- I
26 think -- I assume what we should do now is figure out how the

1 plaintiff can move forward in litigating the case.

2 THE COURT: Well, I think that's right. I mean I
3 guess what I would ask is what is it that you are suggesting
4 in terms of a sanction here?

5 MR. HARVIS: Sure, Your Honor. This is Gabriel
6 Harvis for the plaintiff. So, you know, we think that in
7 order to deal with the issues of where we are in the case
8 right now that it would be appropriate to equitably toll the
9 statute of limitations so that we're not under the 19-day time
10 limit in order to get this sorted out. And I also want to
11 note that the focus on these two claims is really unfair
12 because we've only been able to focus on these two claims
13 because it's been so difficult to pull the information about
14 them from the defendants.

15 But in reality, what we've learned two weeks ago is
16 that this is in fact a much bigger case. It involved
17 potentially a coverup, as Your Honor alluded to, and there are
18 -- we have a number of other claims now based on this that we
19 want to explore and potentially add to the case. So we would
20 like leave or I suppose an adjustment of the Rule 16
21 scheduling deadline so that we have the opportunity to file an
22 -- and propose amended complaint.

23 We would also like the opportunity to have plaintiff
24 do a line up with the individuals that were involved in this,
25 both in the investigation and the search warrant, including

1 the investigators. And we propose that that happen at One
2 Police Plaza so that Ms. Martinez has a full and fair
3 opportunity to see these people and determine who was
4 involved. That goes to resolving where we are in the
5 litigation.

6 But then there's a question of how do we make sure
7 that something like this doesn't happen in the future. And I
8 want to refer the Court to an order from Honorable Martin of
9 the Southern District. This was in 1998, and I think it was
10 at a relatively similar point in time. This is 1998 West Law
11 677583.

12 THE COURT: 677- --

13 MR. HARVIS: -583.

14 THE COURT: -- -583. Okay.

15 MR. HARVIS: And that was a situation where -- it's
16 called James v. City of New York.

17 THE COURT: Okay.

18 MR. HARVIS: And that was a case where Judge Martin
19 determined that this -- the Law Department needed to
20 understand that only a severe sanction would let the
21 Department realize what kind of errors had been made. And so
22 in that case that case actually resulted in the creation of
23 the Special Federal Litigation Division, the reorganization of
24 the Law Department. And for a time when Ms. Fett and I were
25 there, I can say from personal experience discovery

1 obligations felt like they were handed in a different way, and
2 I think that that drew somewhat from Judge Martin's decision.

3 So what we think is an appropriate sanction here
4 would be either a default judgment or striking of the answer
5 and some sort of monetary award that either in part or in
6 whole makes the plaintiff whole for the time and attorney
7 energy that has been spent trying to extract this information
8 from the defendants. So that would be our suggestion.

9 THE COURT: All right. Counsel.

10 MR. THADANI: First of all, Your Honor, again with
11 respect to the request for a lineup, I struggle to, like, even
12 understand what the -- what the function of that is. Again,
13 the plaintiff was provided with photographs of all of the
14 officers at the 107 Precinct during the time that she was in
15 custody there including the individuals that were disclosed in
16 this new information that has been provided in terms of
17 Lieutenant Cammy, Captain Hanrahan, et cetera.

18 Those individuals' photographs were in the
19 photographs produced to plaintiff. Plaintiff had an
20 opportunity to review those documents, review those
21 photographs. She identified the two defendants in the case
22 and made no mention of any of the other individuals. She then
23 mentioned Lieutenant Cammy and that Lieutenant Cammy had an
24 interaction with her she had done so that may have led to an
25 earlier finding of all of these documents that are now being

1 disputed right now. So first of all, with respect to a
2 lineup, they've already had the opportunity to review
3 photographs of the officers and identify the officers who she
4 alleges were involved in terms of the allegations she's making
5 in the complaint.

6 In terms of the sanctions that they're seeking in
7 terms of monetary awards and default judgment, Your Honor,
8 again, the plaintiff hasn't shown any prejudice in the case.
9 And what I mean by that is the documents that are being
10 produced, the documents concerning the fact that Ms. Martinez
11 was injured and self-inflicted her injuries relates to our
12 defenses in the case. It does not relate to the plaintiff's
13 claim that she was assaulted by two other completely different
14 officers at the precinct. These documents just corroborate
15 information the plaintiff has already had the entire course of
16 this litigation. It was not our contention that the plaintiff
17 was not injured at the precinct. Our contention was that the
18 defendant officers and no member of service caused the
19 injuries to the plaintiff. We have evidence --

20 THE COURT: So your position is that the fact that
21 they may have spent thousands of dollars on depositions
22 without relevant documentation is not prejudiced? If that's
23 the case is it the City's position, corporation counsel's
24 position, that there's never a need to disclose information
25 that is helpful to your defense because who cares? It doesn't

1 support their case.

2 MR. THADANI: Your Honor, that is not our position.

3 But at the time that the --

4 THE COURT: Well, that seems to be the argument --

5 MR. THADANI: During --

6 THE COURT: -- that you're making at this moment.

7 MR. THADANI: During the course of this entire
8 discovery period that plaintiff's counsel was aware that one
9 of our defenses was that the plaintiff self-inflicted her
10 injuries. The only difference now is that Lieutenant Cammy
11 has been identified as someone who observed that actually
12 happening. Certainly the plaintiff is more than free to
13 depose Lieutenant Cammy, and that's on -- and Officer Ryan, in
14 fact, and Officer Ryan actually was already noticed and
15 scheduled for a deposition prior to this conference which was
16 canceled before it was scheduled to take place. With respect
17 to the fact that --

18 THE COURT: And you don't think --

19 MR. THADANI: -- certain information was not --

20 THE COURT: And you -- and you don't think that all
21 the time and energy that plaintiff's counsel spent following
22 up on was it Lieutenant Weitzman?

23 MS. FETT: Yes, Your Honor.

24 THE COURT: Who we ultimately discovered after much
25 travail wasn't even there. That that time and money is not

1 prejudicial to the plaintiff?

2 MR. THADANI: Wait, Your Honor, it's our
3 understanding that plaintiff continues to insist that
4 Lieutenant Weitzman was at the precinct and was one of the
5 officers that assaulted the plaintiff regardless of the fact
6 that there's documentation suggesting he's no -- he wasn't at
7 the precinct at the time. The plaintiff had photographs of
8 all of the officers at the 107 Precinct including all of the
9 officers disclosed in the documents that were recently
10 produced. The plaintiff had an opportunity to review those
11 photographs and identify to the defendants -- identify to the
12 City who the two individual officers she was alleging
13 assaulted her were. They did that. They identified Forgione.
14 They identified Weitzman. They've been named as defendants in
15 the case. They did not identify any other officers. They
16 didn't tell the City well, Lieutenant Cammy observed me
17 punching the wall or I was questioned about whether or not any
18 member of service had any wrongdoing or whether Lieutenant
19 Cammy put hands on me at the precinct. Nothing like that was
20 disclosed by the plaintiff.

21 THE COURT: Well, maybe because it didn't happen.

22 MR. THADANI: But it's our contention that it did
23 happen and their contention --

24 THE COURT: I understand that, but, you know --

25 MR. THADANI: And --

1 THE COURT: -- we're in -- what almost two years
2 into this litigation and now you're turning up a key witness
3 -- a key witness -- who's going to say that he saw the
4 plaintiff punching the wall. You don't think this is
5 something that they would have wanted to know at the very
6 beginning of the case? How can you argue to me really with a
7 straight face -- honestly how can you argue with a straight
8 face that that's not prejudicial?

9 MR. THADANI: Your Honor, it's information we would
10 have liked to have had too. It supports our central defense
11 in the case that the plaintiff's injuries were a result of her
12 self-inflicting injuries. We had this medical record. Early
13 on in the case plaintiff acknowledges in their motion for
14 sanctions that it indicated that an officer observed the
15 plaintiff self-inflicting her injuries, punching and kicking
16 at a wall. We both -- both parties have been trying to
17 discover more information about that. We've had to discover
18 the identity of escort officers and officers who relieved
19 escort officers and sergeants who came to the hospital to see
20 that the escort officers were there and officers who
21 transported the plaintiff back to the precinct. That's been
22 an investigation that we've had to take on that plaintiff has
23 pursued that we pursued.

24 Now we -- again, the information that our defense
25 was already well known during discovery. Plaintiff's counsel

1 had a chance to ask all of the witnesses they deposed did you
2 observe the plaintiff punching and kicking the wall at the
3 precinct. Did you hear anyone telling you that the plaintiff
4 self-inflicting her injuries? They had that opportunity to
5 ask those questions. They did ask those questions of certain
6 officers. Yes, Lieutenant Cammy is a relevant witness.
7 Lieutenant Cammy is being disclosed now but discovery is still
8 open. The statute of limitations has not expired. Lieutenant
9 Cammy --

10 THE COURT: Well, 19 days.

11 MR. THADANI: -- can be --

12 THE COURT: 19 days. We got 19 days.

13 MR. THADANI: Well, what would the --

14 THE COURT: Why is that not prejudicial?

15 MR. THADANI: But, Your Honor, the plaintiff hasn't
16 indicated what sort of claim would be filed against Lieutenant
17 Cammy. They've identified the officers that they claim allege
18 the -- injured the plaintiff at the precinct.

19 THE COURT: Maybe it's because they have several
20 thousand pages of a report to digest and review before they
21 can simply amend their complaint and raise claims against the
22 City's officers. You would move against them for Rule 11
23 sanctions if they didn't do sufficient investigation before
24 amending their complaint and naming new officers. So again I
25 -- you know, I just can't believe you're really making this

1 argument.

2 MR. THADANI: Your Honor, understanding that there
3 are thousands of pages in the -- in that booklet, again, with
4 respect to the prisoner injured in custody it's six pages.
5 And yes, there's relevant information there, but it's relevant
6 to our defenses. Plaintiff's I imagine would certainly
7 dispute that any of that happened, that the plaintiff
8 self-inflicted injuries, that Lieutenant Cammy made any
9 observations, that Officer Ryan made any observations. Their
10 contention I imagine still will continue to be that the two
11 defendant officers in this case assaulted her at the precinct.
12 Our contention is different obviously. But again the
13 documents that were produced are supportive of our defenses,
14 not -- it's not related to plaintiff's claims per se because
15 again it supports a defense that was well known during the
16 course of this litigation. The remaining pages in that
17 booklet are --

18 THE COURT: What about your own concession that
19 witnesses have lost their memory about some of this stuff,
20 that when questioned they couldn't remember details? How is
21 that not prejudice? Isn't that the quintessential definition
22 of prejudice as a result of delay?

23 MR. THADANI: We did not make any representations
24 that witnesses did not -- I don't know where that's coming
25 from exactly.

1 THE COURT: I thought -- well, maybe the plaintiff's
2 made --

3 MR. THADANI: But irrespective --

4 THE COURT: I apologize.

5 MR. THADANI: But irrespective of that --

6 THE COURT: The plaintiffs may have made that but --

7 MR. THADANI: I believe the conversation we had was
8 relating to escort officers at the hospital after the
9 plaintiff had already been injured and being seen by doctors
10 that they didn't remember basically sitting at the hospital
11 and waiting for her to be checked by doctors. With respect to
12 Lieutenant Cammy and Officer Ryan we never made any indication
13 that they did not remember what happened or they didn't have
14 any recollection. But again, even as I mentioned in our
15 opposition letter, to the extent they do have a lack of memory
16 of what happened that goes to the credibility of the defense
17 we're trying to present not to plaintiff's claim which is that
18 two different officers assaulted the plaintiff at the
19 precinct.

20 MR. HARVIS: May we be heard, Your Honor?

21 THE COURT: Yeah, I mean I gather there's no
22 prejudice.

23 MR. HARVIS: Right, yeah. No, we're fine. No. No.
24 Well, I just want to -- just to take these in order. The --
25 we were provided with photographs of an unknown vintage while

1 -- with all of the officers on a green screen having no ID,
2 completely absolved of any context, and at which point we were
3 focused on, indeed, identifying these two individuals. We
4 have never -- now that the case has expanded and we've
5 received a variety of highly relevant disclosures --
6 including, for example, an audio recording of plaintiff's
7 person who she lived with at the time, Danny Rivera [Ph.] who
8 described hearing her scream and observing her request for
9 medical attention being denied -- the case has expanded in
10 terms of its scope.

11 And we are -- and we believe that we're entitled to
12 be where we would have been at the beginning of the case which
13 is having known about this investigation, understanding what
14 the defenses were, exploring the witnesses through that
15 discovery, allowing Cammy and Ryan to be the first witnesses
16 or among the first witnesses who were deposed, presenting them
17 and examining them about this evidence, perhaps when
18 Lieutenant -- excuse me, Captain Hanrahan was still alive, he
19 could still answer questions. He -- Captain Hanrahan is the
20 exceedingly important witness in this case because he is the
21 person who actually allegedly, six days before the whole thing
22 happened, interviewed Ryan and Cammy and took certain
23 statements. There's no record of those interviews that's been
24 provided to us. There's no recording of them. So we just
25 have a memorialization that's unsigned of a dead man. That is

1 what we now have to go on because the City decided to make
2 their disclosures in this fashion. And I think I'll step
3 down.

4 MR. THADANI: Your Honor, first of all, with respect
5 to Captain Hanrahan, I don't have the precise date but he
6 passed away shortly after the complaint was filed. This is
7 not an issue of well if we have disclosed it earlier Captain
8 Hanrahan could have been deposed. That -- within the time
9 frame of this litigation that was not something that was a
10 realistic possibility. Of course it's unfortunate that he
11 passed away. We would certainly like to have him as a witness
12 as somebody who, according to the documents, interviewed the
13 plaintiff specifically about her injuries and the plaintiff
14 specifically informed him that she was not alleging any
15 wrongdoing by members of service which is obviously completely
16 contrary to the allegations the plaintiff is making in this
17 case against the two defendants in this case.

18 Again, with respect to this information, we did not,
19 you know, intentionally withhold this information. It's
20 documents that support our defense in this case. We have no
21 benefit in withholding the documents or withholding this
22 witness. If anything it would have made clearer to plaintiff
23 early on in this case that their case had little merit, not
24 that, well, there's this cryptic note in this medical record
25 and we have no corroborative evidence of it.

1 Now we have evidence that corroborates that a
2 contemporaneous audio recording but a lieutenant at the
3 precinct who indicated shortly after the incident that the
4 plaintiff injured herself, what her injuries were, and what
5 happened. Before we just had this medical record identifying
6 an officer. We have no reason to withhold officers that
7 support our defense. It just turns out that because Officer
8 Ryan wasn't thoroughly interviewed until he was noticed for a
9 deposition we did not learn about the investigation.

10 Obviously during the course of discovery we have a
11 duty to supplement our discovery responses and supplement our
12 initial disclosures and that's what we did. The documents
13 that were produced weren't related to any order in the case.
14 There wasn't ever an order in this case as far as I'm aware
15 that related to identifying any individual who observed the
16 plaintiff injure herself or relating to investigatory files.
17 The prior orders in the case involved identifying the
18 defendants in this case, which was done, and then requesting
19 specifically delineated documents.

20 THE COURT: But I'm sorry. Let me just back up for
21 a second. If Lieutenant Cammy is the one who observed her
22 smashing her fist into the wall, as you allege, why was he not
23 named then as a person with information such that they could
24 figure out maybe he's the defendant in the case? So when you
25 say they -- the orders didn't relate to any of that, I don't

1 -- I don't really quite follow that.

2 MR. THADANI: Again, Your Honor, early -- again, we
3 produced photograph because we weren't able -- the orders
4 related to who were the officers that allegedly interrogated
5 the plaintiff. Our contention was that the plaintiff wasn't
6 interrogated at all. Then there was orders with respect to
7 providing photographs of all of the officers who were at the
8 precinct during the time that the plaintiff was there so the
9 plaintiff could identify which officers fit the description of
10 the officers she claimed injured her.

11 The plaintiff was provided those photographs,
12 identified the two defendants. Lieutenant Cammy, among
13 others, was also in -- among those photographs, was not
14 identified by the plaintiff. So to say that Lieutenant
15 Cammy's a potential defendant in the sense that he may have
16 been one of the officers that assaulted the plaintiff would be
17 -- would mean that the plaintiff then misidentified --
18 purposely misidentified defendants in a photo array first of
19 all. Second of all, we disclosed --

20 THE COURT: Her -- wait a minute.

21 MR. THADANI: -- Lieutenant Cammy, we --

22 THE COURT: Hold it. Why would she purposely
23 misidentify Lieutenant Cammy?

24 MR. THADANI: No, Your Honor, what I -- what I'm --

25 THE COURT: Explain that logic to me.

1 MR. THADANI: What my point is that Lieutenant
2 Cammy, his photograph appeared among the photographs that were
3 produced to plaintiff. She did not identify Lieutenant Cammy
4 as a defendant or somebody who assaulted her at the precinct
5 or even as someone she had an interaction with at the
6 precinct. And then with respect to disclosing Lieutenant
7 Cammy we disclosed of him in our recent disclosures because
8 that's when we learned of his -- the fact that he specifically
9 had an interaction with plaintiff and then he made specific
10 observations. We disclosed that information as soon as we
11 learned of that information.

12 THE COURT: Two weeks ago.

13 MR. THADANI: It was two weeks -- it was roughly two
14 weeks ago. Again, on December 1st when we first went to the
15 opposition letter we submitted to the Court there was a
16 discussion between myself and plaintiff's counsel about
17 outstanding depositions. One of the depositions they wanted
18 to schedule was Officer Ryan's. On December 1st I spoke with
19 Officer Ryan to confirm the dates that we had agreed on to
20 schedule his deposition to confirm that we could go ahead on
21 those dates. I spoke with him. I had a discussion with him.
22 He had detailed to me that he recalled speaking to IAB in
23 connection with the plaintiff's arrest.

24 I wasn't expecting an investigation into a prisoner
25 injured in custody. But based on that information I looked up

1 his IAB officer resume. He was going to be coming in to be
2 deposed and to prep for deposition that was already scheduled.
3 And upon doing that that's when I learned and we learned that
4 there were three investigations that were done. We got the
5 files. We produced the files. All of that happened in the
6 course of less than three weeks to, one, learn about the
7 investigation occurring and then get the documents, review the
8 documents, and produce the documents to plaintiff including
9 the recordings that were produced, including the disposition
10 form that was produced. We just didn't learn of that
11 information beforehand.

12 And again we had no reason or incentive to withhold
13 the information. We didn't wait until the expiration of the
14 statute of limitations if that even matters in the sense that
15 again the plaintiff is -- are -- has already identified the
16 two officer defendants she alleges assaulted her in the case.
17 And again we -- that is -- it is -- Lieutenant Cammy is one of
18 the key witnesses for our defense, supportive of our defense.
19 We have -- we're -- it's not -- we have no incentive or any
20 reason to have withheld his identity for any reason. It's
21 just that we -- when we finally learned of his identity, when
22 we finally learned of his involvement in the case, when we
23 finally obtained the IAB documentation we produced it to
24 plaintiff which is according to our duties and our
25 responsibilities to supplement our discovery responses and our

1 initial disclosures during the scope of discovery.

2 THE COURT: Let me just make this comment to Ms.
3 O'Flynn as a supervisor in the officer.

4 MS. O'FLYNN: Yes, Your Honor.

5 THE COURT: This case --

6 MS. O'FLYNN: Yes.

7 THE COURT: -- has given me extreme pause as to
8 whether or not this kind of lack of diligence maybe is the
9 polite way to put it occurs in every single case before me
10 because I am appalled. I hear the arguments. Frankly, I
11 don't buy them. But honestly there has to be a change, and
12 you need to go back to your office and explain to them that
13 the Court is not happy about any of this. I have spent more
14 time on this case issuing order after order after order and
15 this is no reflection on you, Counsel, because you just came
16 into the case and hasn't been as familiar with it as I am.
17 But I shouldn't have to do this. It is your responsibility as
18 the Corporation Counsel for the City of New York to make sure
19 that discovery obligations are fulfilled in the manner as
20 required by the Federal Rules of Civil Procedure and that
21 there isn't this kind of last minute, oh, my God, we just
22 discovered it because whatever reason.

23 MS. O'FLYNN: Absolutely, Your Honor, and I'm happy
24 to bring that message back. And I completely understand where
25 the Court is coming from. I think, you know, in a perfect

1 world this case would have started off differently, and
2 unfortunately we've been sort of -- been chasing the entire
3 time of this case.

4 I will note respectfully that to the extent the
5 Court has had to issue many orders many of those orders were
6 in response to orders to compel that respectfully were
7 submitted in a way that appeared like counsel was trying to
8 burden our assistant corporation counsel to the point -- I'll
9 give an example, Your Honor. Going through the docket it's
10 quite clear what was ordered at various conferences. Without
11 fail, knee-jerk reaction not before the deadlines had expired
12 there were motions to compel additional documents. So we had
13 our attorney trying to comply with the court order and then a
14 motion to compel on another set of documents.

15 For example, there was the court order -- the first
16 motion to compel was filed in July of 2016, Docket 14. On
17 June 28th there had been a conference and we were given 30
18 days, which would have been until July 27th, to quote,
19 "identify the officers who interrogated plaintiff, " and if no
20 officers were found then a photo array was going to
21 potentially happen. A week later, July 6th, was the first
22 order to compel wherein counsel filed an application claiming
23 they needed labeled photographs of all the officers with
24 respect to discovery requests. So that's a different track
25 now with respect to photo array. Mr. Johnson was in the

1 process of identifying who had interrogated plaintiff and in
2 the process of compiling photographs for this array. So
3 that's the first order to compel.

4 In August there's a second motion to compel, and
5 that followed our production of what we learned to be the CCRB
6 file with additional records. And Mr. Johnson indicated that
7 he had in fact confirmed who the interrogating officer was,
8 that photos of all of the people involved in the search
9 warrant and the arrest were in the CCRB. Ms. Fett and her
10 client were going to go through those records to see if they
11 could narrow down where we were going. That's the second
12 motion to compel.

13 I will note that on each of the motions to compel,
14 we did file a response on the docket where we laid out
15 everything we did. Now when a million things are being
16 requested and emails are coming with additional requests
17 things do get lost in the mix, but all along we were
18 diligently trying to figure out who the unknown officer that
19 assaulted. I think a big issue in this case, Your Honor, is
20 our very different views of what happened. So we've always
21 understood that plaintiff injured herself. They've alleged
22 that these unknown officers assaulted her. The officers that
23 they identified we believe did not do any such thing. We
24 believe all along it was this self-inflicted injury. To the
25 extent she may not have picked Lieutenant Cammy out of the

1 photo array it may have been perhaps because he was the one
2 who stopped her from injuring herself further. We don't know.

3 Needless to say I think all of us would have liked
4 this case to have been handled differently but I think the
5 motions to compel were filed in a very aggressive manner in
6 this case, and I will note that Mr. Johnson is not the only
7 attorney in our office who has been subjected to this kind of
8 litigation tactics but the plaintiff's firm. And I think it's
9 something that our office -- it does not go unnoticed, and
10 because they previously worked with us I think they know which
11 buttons to push. I think they know what voluminous things
12 they can ask us to request.

13 By way of another example, on one of the requests
14 for a motion to compel they attached 13 items that they had
15 emailed Mr. Johnson less than two weeks prior, and the Court's
16 endorsed that as produce all these records. So there were
17 multiple avenues where Mr. Johnson was trying to track down
18 records, produce things, and the docket does reflect that we
19 did respond with the steps we had taken. I -- of course all
20 of us would have liked to have known this information earlier
21 without a doubt, Your Honor. But to the extent they claim
22 they were prejudiced we have also been prejudiced by having to
23 -- you know, it's been a wild goose chase for us, for the
24 Court.

25 And to the extent anybody could have given us a

1 little bit of a clue that they spoke to somebody at CCRB, that
2 they spoke to somebody at IAB, I think our focus in terms of
3 where to find information would have been directed in a more
4 directed way. That being said I think, you know, within the
5 past unfortunately we can't change, but I do assure the Court
6 that we do take these obligations extremely seriously. And as
7 the Court knows we settle cases where we think there's merit.
8 Unfortunately, when a case is marked no pay our experience
9 with this firm in particular has been that they go -- they go
10 just to such extremes to put our attorneys under such pressure
11 that I will tell you that several attorneys have been brought
12 to tears by them by the type of aggressive behavior they've
13 used in terms of phone calls and the like.

14 So I just think here is where we are. We now have
15 the information that all of us would have preferred much prior
16 to now. But to the extent our office has been trying
17 diligently, Your Honor, I assure you we have been working
18 hard. And the fact that counsel has been changed on this case
19 I think represented our office does take this seriously.
20 We're trying to get to the bottom of this, and we apologize
21 for the Court's time that's been taken. But I do think that
22 it's a two-way road at this point.

23 MR. HARVIS: May I just briefly be heard, Your
24 Honor?

25 THE COURT: Sure.

1 MR. HARVIS: So I think that it is the diligence of
2 Ms. Fett and myself that is the only reason why there was ever
3 any discovery that were received in this case. I think that
4 if the defendants were left to their own devices or perhaps a
5 less diligent firm were handling the prosecution of the case
6 it would have been exactly -- it would have been a [inaudible]
7 response with no investigation. It would have been an initial
8 conference and an order from the Court with no investigation.
9 It would have been just multiple repeated orders from the
10 Court to specifically identify the officers that literally
11 were defied completely no action taken whatsoever. And so to
12 suggest that it is our diligence -- and as I was saying to Ms.
13 Fett on the way over here, there is -- if it were not for us
14 having taken such an affirmative attempt to get this material
15 Ms. Martinez would have -- they would have succeeded in
16 keeping Ms. Martinez from being able to timely assert her
17 claims, and she would have been victimized yet again.

18 And to just speak to the merits of this amazing
19 defense that warrants a no pay position, I first of all want
20 to note that the decision about this case was made in a
21 complete vacuum by them. They had no idea what the actual
22 case was about, what their defense was, who the witnesses
23 were. They just made that in a most unprincipled way
24 possible, and frankly the plaintiff is very seriously injured.
25 And every single credible data point in this case proves that

1 they have absolutely no legitimate defense to it.

2 Just looking for one second at this Hanrahan file,
3 we have Lieutenant Cammy nine hours after the plaintiff was
4 injured, when he should have called it in immediately. Only
5 after it's determined that she's been hurt does she -- does he
6 place the call. He specifically says that she's hurt in the
7 juvenile processing room which is on one side of the precinct.
8 And then lo and behold when Hanrahan interviews him six days
9 earlier he's saying that it happened in the arrest processing
10 cell which is on the other side of the precinct. So the idea
11 that this is some kind of proof that plaintiff didn't -- it's
12 opposite. This is a -- the weakest defense you could imagine.

13 And I just want to add Ryan was not the only person
14 who had this information. There were almost a dozen GO15s of
15 different officers in connection with this investigation,
16 specifically DiGenero who was -- who they're describing as
17 this intelligence officer who knew everything, he knew he had
18 been GO15'ed twice. He knew he had been substantiated in
19 these allegations. He's coming in for a deposition and there
20 apparently wasn't even a discussion with him about have you
21 ever been investigated about this, did you ever give any
22 testimony about this, any of those basic due diligence things
23 that you think someone would do. So the idea that somehow
24 Ryan is the -- you can point to him and say, you know, he
25 didn't -- we didn't speak to him is -- the entire leadership

1 of the 107th Precinct knew about this.

2 I also want to note it is not the standard for the
3 imposition of sanctions whether or not it was helpful to them
4 to withhold it. That isn't the part of the inquiry. The
5 inquiry was about whether the plaintiff was prejudiced and
6 whether the obligations were unfulfilled. And we believe that
7 not only the inherent affirmative obligations of the
8 Government attorneys but the affirmative obligation both by
9 the [inaudible] order and like the five or six other orders
10 that relate to the officer identities all impose additional
11 layers of burden here none of which were met. And frankly the
12 most problematic part is the failure to take responsibility
13 for it. And what I see is this continuing effort to --
14 somehow because we are aggressive -- I'm so glad that we're
15 aggressive. I'm glad that that happened, and I just -- I hope
16 that every other plaintiff's counsel is so aggressive because
17 it seems like the only way to get anything from the City of
18 New York.

19 MS. O'FLYNN: I respectfully disagree. With respect
20 to how we decide our settlement position, early on it was
21 clear that it appeared plaintiff injured herself. She was
22 arrested for a search warrant that would be -- recovered over
23 200 [inaudible] of heroin. This was not a case that we valued
24 early as being a case that we thought we needed to put a
25 substantial amount of money on if the injuries are self-

1 inflicted.

2 With respect to the orders in this court to
3 identify, the Valentin asked us to identify officers involved
4 in the arrest. We did that. The order --

5 MR. HARVIS: No, you didn't. No, you didn't.

6 MS. O'FLYNN: The officers involved in the arrest?

7 MR. HARVIS: No, you identified Zac Raymond [Ph.],
8 and he was not involved in the arrest. He was [inaudible].

9 MS. O'FLYNN: And we asked you to give more
10 identification so we could try to identify the others.

11 MR. HARVIS: I won't speak directly to counsel. I
12 apologize.

13 MS. O'FLYNN: That is what the letter said. The
14 next order told us to identify the officer who interrogated
15 plaintiff which we did. We were then told to investigate
16 officers who matched the description which we did. We
17 provided the photos and plaintiff picked out two officers.
18 Cammy was in the photos, and she did not pick out him. This
19 has been a belabored process, but I respectfully take offense
20 to the fact that you would think that this is the right to
21 litigate a case.

22 MR. JOHNSON: I think just if I may here Your
23 Honor --

24 THE COURT: I'm sorry. She's been standing here for
25 a minute. I'll give you a chance, Mr. Johnson.

1 Go ahead.

2 MS. FETT: I just wanted to note for the Court that
3 initially when defendants made their disclosures on December
4 18th they didn't even produce the entire investigative file to
5 us. And in fact it was Mr. Harvis that had to ask -- right,
6 it was four pages out of those 1,000 pages that you have. And
7 defendant -- I'm sorry. And Mr. Harvis --

8 THE COURT: I'm sorry. I'm sorry. Say that again,
9 the documents that I -- that I picked up a minute ago, this
10 whole file, you're saying you got four pages?

11 MR. HARVIS: Exhibit 25, Your Honor.

12 MS. FETT: We initially got Exhibit 25 and Mr.
13 Harvis asked defense counsel there's got to be more because
14 there's Worksheet 26 and Worksheet 27, so where is the rest?
15 And defense counsel specifically said he has to go back to his
16 supervisors. He doesn't know if they're going to turn it
17 over. And it wasn't until we pressed them that we got the
18 entire file.

19 The second thing I just wanted to add, Your Honor,
20 is that I know defendants keep saying that of course they
21 would have wanted to disclose it because it was good for them,
22 and I know Mr. Harvis addressed it. But the file actually is
23 not good for them. You have Officer Ryan going back and forth
24 saying he saw her, he didn't see her. So I know that's not
25 the test whether or not that's good for them, but that's a

1 failing argument anyway because it's not good for them.

2 That's all, Your Honor, thank you.

3 MR. THADANI: Your Honor, just to -- just to add
4 some color to what plaintiff's point was --

5 THE COURT: I said Mr. Johnson could speak.

6 MR. THADANI: My apologies, Your Honor. Yes, of
7 course.

8 THE COURT: I mean you guys can fight among
9 yourselves.

10 MR. THADANI: Okay.

11 THE COURT: But I did tell him he could speak next.

12 MR. JOHNSON: Just to provide some context on why
13 this file wasn't found earlier. The first thing we were
14 looking for and the suggestion of plaintiff's counsel, was
15 that UF-49 I think that was called, the unusual incident
16 report? And something like that would be filed if something
17 happened at the precinct, so we were looking for that. And
18 that never materialized. Another place which plaintiff's
19 counsel also suggested was that look at the Command Log. If
20 there was some sort of injury that happened at the precinct it
21 would be noted on the Command Log. So when I looked at those
22 avenues and didn't find either of those things that was one
23 indication that maybe that was -- that -- there was nothing
24 else there.

25 The fact that I did not have more information from

1 Officer Ryan is that I had -- you know, we were -- we moved on
2 to trying to identify the defendants and that took a very long
3 time. And then from there we were producing the disciplinary
4 records of the defendants. And by the time we got back to the
5 idea of Officer Ryan a lot of time had passed. And, you know,
6 to the extent if we had better information this would have
7 come up earlier because, you know, if there was a UF-49 that
8 would have been -- that would have shown up very easily in our
9 records and then that would have alerted us to the fact that
10 there was more information to be had. There was a notation in
11 the Command Log that, you know, there's some sort of injury in
12 the precinct then that would have, you know, [inaudible] us to
13 Lieutenant Cammy earlier.

14 We -- to the extent that we did find the file, it is
15 -- you know, it is -- it is a perk of where the databases
16 were. We found the CCRB file I think somebody mentioned that
17 the CCRB file was in Danny Rivera's name, and so that's how we
18 found the CCRB file. A lot of these things were just not
19 under the right names and weren't able to find unless -- you
20 know, we talked to a lot of people in this case. We talked to
21 a lot of officers in this case.

22 You know, the fact that we didn't return to Officer
23 Ryan again, you know, in a perfect world we should have done
24 that, but there were dozens of officers that we were talking
25 to. We talked to people at Queens Central Brooking, for

1 example, because at Queens Central Booking that's when she's
2 first sent to the hospital. So our focus entirely then was
3 that it must have been somebody at Queens Central Booking who
4 told, you know, the hospital that she might have injured
5 herself. In fact, a theory that we had was that if she was
6 banging her hands against the wall this happened at Queens
7 Central Booking and that's why she was sent from Queens
8 Central Booking back to the hospital.

9 So that, you know, the fact that we couldn't find
10 this file at the -- you know, at the time during all these
11 investigations is because, you know, we had some assumptions
12 about this case. For example, that maybe if she did injure
13 herself it happened at Queens Central Booking. There were
14 names of officers who were there at Queens Central Booking who
15 noted her injuries on the prisoner report. For example, the
16 Queens Central Booking guy, I think it was Lieutenant -- or
17 Sergeant Seeman [Ph.] who signed the prisoner interview
18 record, so that made us think that he was the one who maybe
19 had that information. And then maybe there was another person
20 at Queens Central Booking who also dealt with her that we
21 thought maybe he said that. So it wasn't the fact that, you
22 know, we should have known by Lieutenant Cammy. We should
23 have in a perfect world, but the evidence that we had gotten
24 at that time led us to believe that a -- self-inflicted
25 wounds, that if they exist, it happened at Queens Central

1 Booking so we spent a lot of time doing that.

2 And then once that didn't add up we went to the
3 escort officers because we're like well, if the escort
4 officers -- if somebody needs taken to the hospital it'd be
5 the escort officers. So we interviewed the escort officers.
6 And we [inaudible] they did escort them, and -- but they had
7 no recollection of whether or not they even had said that to
8 Queens Central -- to the hospital. So we didn't really know
9 whether or not any statements were made by those escort
10 officers to -- excuse me, to the hospital. They also didn't
11 have a recollection or -- of, you know, anyone calling into
12 IAB that was asked during the deposition.

13 So I mean, you know, it wasn't, like, a nefarious
14 thing to cover it up. It's just that we went on the wrong
15 track because we thought hospital note suggested that whatever
16 happened in self-inflicted wounds happened at Queens Central
17 Booking. And we spent a lot of energy and time looking at
18 that because in a perfect world if she had been injured at the
19 precinct she should have been taken to the hospital from the
20 precinct and that would have led us to believe that somebody
21 in the precinct called the hospital or told the hospital. So
22 we had a lot of different avenues and, you know, and to try --

23 THE COURT: So there are a lot of things in this
24 perfect world that didn't happen.

25 MR. JOHNSON: Well --

1 THE COURT: She didn't -- she didn't get taken for
2 medical attention which we now know she should have because it
3 appears from the new records that she was injured in the
4 precinct whether self-inflicted or otherwise. There's no
5 unusual incident report which should have been prepared if she
6 was in fact injured in the precinct. And there's no reference
7 in the Command Log. So the perfect world here seems to have
8 fallen apart in many, many instances, and while that may not
9 be your fault, Mr. Johnson, it certainly is not a good thing
10 for the New York City Police Department.

11 So I said he could speak and then, Mr. Harvis, I'll
12 give you a chance.

13 MR. HARVIS: Okay.

14 MR. THADANI: Your Honor, just two points. One just
15 to address plaintiff counsel's contentions about the documents
16 in the booklet with respect to the underlying investigation.
17 On December 18, 2017, Your Honor ordered us pursuant to --
18 there was a joint letter that was submitted to the Court,
19 number of discovery, outstanding discovery issues, that
20 plaintiff, that defendants indicated as well. Your Honor
21 ordered the defendants to produce all of the outstanding
22 documents that plaintiff requested by the 18th. We did that.
23 In addition to that we produced these investigative files.
24 What we did produce was all the documents we had in our
25 possession concerning the prisoner injured in custody, the

1 self-inflicting injury incident, and we produced excerpts
2 initially of the file pertaining to the missing property
3 because our contention is that again plaintiff's claims in
4 this case do not relate to missing property or stolen
5 property.

6 What we did produce, and it was indicated in our
7 production letter, was we were producing relevant excerpts of
8 the file which did not involve any of the defendants as
9 subject officers but rather what we did produce was a
10 worksheet and audio recordings pertaining to interview of
11 Hector Rivera who was the individual -- I may be getting the
12 name wrong -- Danny Rivera who was the individual who was
13 arrested along with plaintiff as well as the plaintiff because
14 both of those individuals referenced -- in passing but did
15 reference -- plaintiff's allegations concerning being injured
16 at the 107 Precinct, so we produced those documents.

17 Plaintiff's counsel then after having had a chance to review
18 our disclosures had a discussion with me about producing the
19 remainder of the file. It wasn't like a secret that I only
20 produced excerpts because literally the production letter
21 stated we produced excerpts of the file. Then I had -- we had
22 a discussion internally about producing the remainder of the
23 file, and we decided that -- to do that in which we did within
24 I think two days.

25 I think one other thing that, you know, I'd like to

1 just mention is yes, I think we all agree that things could
2 have been done differently. It's unfortunate that these
3 documents are being produced now. Ideally, they would have
4 been produced earlier. But I think also what's being lost is
5 the fact that the -- there are issues -- not blame but there
6 are issues on both sides of the table here. The plaintiff's
7 attorney -- and they haven't even tried to address in the
8 reply or today why in their discovery response that they
9 specifically state the plaintiff never made any complaints to
10 IAB, why there wasn't any discussion about that, why there
11 wasn't an identification of Cammy in the photo array.

12 THE COURT: Well, did she file a formal complaint
13 with IAB?

14 MR. THADANI: She called in and made a complaint to
15 IAB regarding missing property. She was -- she called CCRB
16 and tried to make a missing property complaint to them, too,
17 and they kicked her to IAB. She was interviewed by IAB. She
18 received a letter which we attached as an exhibit to our
19 opposition that indicated we have received your complaint
20 about missing property, we have resolved your complaint, and
21 it indicated that the complaint was closed and what the
22 results of those complaints were and to call somebody at IAB
23 if she had any questions or wanted to discuss the
24 investigation further. That was never disclosed.

25 THE COURT: But I guess I don't really understand

1 because your position all along, at least this afternoon, has
2 been that her complaint about the missing money has nothing
3 whatsoever to do with the claim of injury and therefore if it
4 wasn't relevant, you didn't think it was relevant, why should
5 they think it was relevant?

6 MR. THADANI: That's fair, Your Honor, but the
7 response in the discovery responses weren't that there were no
8 relevant investigations or no relevant complaints made. They
9 made a specific representation in the sworn discovery response
10 that there were no investigations, no complaints made by the
11 plaintiff. They never supplemented that response to change --
12 to change that response. They never produced the letter that
13 they received with respect to the IAB investigation.

14 That's true that we contend that the investigation
15 is moot but plaintiff's contention here as a result of these
16 GO15s of these other officers and there was this whole full-
17 blown investigation, again, none of this has to do with
18 plaintiff's claims with regarding being injured because
19 whenever she was asked by CCRB or by IAB about these injuries
20 she said I have a lawyer, I don't want to talk about it, I
21 don't want to tell you about it. IAB and CCRB are telling
22 her, well, we investigate those claims, too, are you sure?
23 We'd like to investigate this too. No, I don't really want to
24 talk about it. Let me talk to my lawyer first. I'll get back
25 to you, and she never did. So the investigations related to

1 missing property. But again, the plaintiff did make a
2 specific disclosure and representation in this that she didn't
3 make any complaints.

4 THE COURT: About this incident. Okay. About the
5 injuries. Okay.

6 Mr. Harvis.

7 MR. HARVIS: Very briefly, Your Honor. I don't want
8 take a lot of the Court's time. I just want to say, you know,
9 we're not conspiracy theorists. We don't think any kind of
10 far-ranging thing, but, you know, oftentimes the most simple
11 explanation is the correct one. Here Your Honor just detailed
12 the absence of any of the appropriate notifications in the
13 record, and while counsel may have acted in some semblance of
14 good faith in attempting to locate the stuff if -- even if it
15 was the NYPD who buried it by not doing the right forms and
16 mislabeling the numbers and everything else they are still
17 subject to this Court's power to hold them accountable and
18 they cannot be shielded from that by having their attorneys
19 not know what's going on and not disclosing this. And Ryan in
20 particular in addition to DiGenero who was deposed, they never
21 said anything about these investigations and we believe they
22 have a duty to disclose it especially given the Court's
23 orders. And the last thing that I want to mention --

24 THE COURT: Were they asked if they were interviewed
25 by IAB about this?

1 MR. HARVIS: Well, Ryan was not -- was never
2 deposed.

3 THE COURT: No, no, no. DiGenero.

4 MR. HARVIS: DiGenero, I don't think we asked him
5 that specific question, so I don't think that question was
6 asked. But again, you know, we have no way of knowing --
7 sure, Ms. Martinez knew she had that single conversation about
8 missing property, but she didn't know that behind that was an
9 entire universe of GO15s and hearings and investigations and
10 investigative pathways that would have led to the disclosure
11 of all this relevant information. So, you know, all -- we had
12 no idea to even ask about that because we had -- we were told
13 affirmatively in repeated discovery responses that there was
14 no investigation. So how could we then -- how were we to
15 divine that that existed so we could then ask him about it?
16 That goes to what we were missing at -- from the beginning of
17 the -- of the discovery period.

18 And the last thing I want to say is we still don't
19 know who told the hospital staff that she was punching the
20 wall. And in fact when we finally got all the disclosure that
21 document that or a series of memo books of people who are --
22 now that we've learned are allegedly the police officers that
23 were -- that were involved in taking her back and forth and
24 then we showed defense counsel the other day in that memo book
25 right at the moment in time corresponding almost perfectly to

1 when that notation was made in the record is the scratch of a
2 sergeant at the hospital who's scratching the memo book of one
3 of these officers in between when the officer arrives at the
4 hospital and when the -- for the 107th Precinct. So that
5 sergeant is there. We don't know who that is, and, you know,
6 it just goes to the drips and drabs and, you know, we never
7 have everything. And even at this late stage we have no idea
8 and they do. And we [inaudible].

9 THE COURT: I have one question before we complete
10 this proceeding and that is plaintiff's counsel has asked as a
11 sanction that the Court toll the statute of limitations. And
12 my question to you is because Officer Ryan -- if you're an
13 officer -- is not named as a defendant can you toll the
14 statute of limitations with respect to him even though he's
15 not really a party at this point and you don't actually
16 represent him?

17 MS. O'FLYNN: I believe, Your Honor, because the
18 statute has not passed yet I believe an order from the Court
19 could extend the -- you know, the deadline in our case to give
20 them more time to amend. I think we'd be in a different
21 position if the statute had passed. So we would not oppose an
22 enlargement of the time to amend the complaint.

23 THE COURT: Can you submit a letter by the end of
24 the day with -- just I don't need a long involved thing --
25 just case citations supporting that because I don't want to

1 issue an order that would later be challenged and by Officer
2 Ryan who might go out and get his own attorney.

3 MS. O'FLYNN: This is true.

4 THE COURT: And they would be out of luck. So --

5 MS. O'FLYNN: Be happy to do that, Your Honor.

6 THE COURT: If you -- if you wouldn't mind.

7 MR. HARVIS: And, Your Honor, just -- sorry, for
8 clarity of the record I just wanted to note I mean we believe
9 that there are a number of additional defendants who may be
10 added to the case. So I just want to be clear we are not only
11 contemplating Ryan [inaudible].

12 THE COURT: I understand but the other officers are
13 in the same position --

14 MR. HARVIS: Exactly.

15 THE COURT: -- I assume as Officer Ryan. They're
16 not currently defendants. They're not currently represented
17 by corporation counsel, so if counsel -- corporation counsel
18 doesn't have the authority to waive for Officer Ryan I'm
19 assuming they don't have the authority to waive for the -- for
20 the others, and I reiterate the reason for the authority is I
21 want to --

22 MS. O'FLYNN: Absolutely, Your Honor.

23 THE COURT: --I make sure that my order is not going
24 to be a problem down the line.

25 MS. O'FLYNN: Absolutely.

1 MR. HARVIS: Thank you, Your Honor.

2 MS. O'FLYNN: I believe this came up in another case
3 so I think there is a case to back me up. So --

4 THE COURT: Okay. Well, that would be very helpful.
5 All right. Anything else anybody wants to add?

6 MR. HARVIS: Not from plaintiff, Your Honor.

7 MS. O'FLYNN: We appreciate your time, Your Honor.

8 THE COURT: All right. Thank you.

9 MS. FETT: Thank you, Your Honor.

10 (Proceedings concluded at 3:43 p.m.)

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1 I certify that the foregoing is a court transcript from
2 an electronic sound recording of the proceedings in the above-
3 entitled matter.

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6 Shari Riemer, CET-805

7 Dated: January 3, 2018
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